

Selected Labor Issues Regarding Work-Based Learning Participants

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EXECUTIVE SUMMARY

Vision

Missouri looks to an ideal work-based learning site for school-aged children free from injuries, illness or unjust practices. Employers shall be provided the education, information and assistance to facilitate them in understanding and complying with state and federal child labor statutes and regulations, the Federal Occupational Safety and Health Act, Missouri Workers' Compensation Laws, and insurance and liability issues.

Mission

The Mission of Missouri's Community Careers System is to effectively promote and facilitate worked-based learning in a safe and healthful work environment which meets all state and federal child labor, safety and health, and workers' compensation statutes and regulations.

Child Labor requirements

The following summary is designed to provide educators and employers understandable information on the child labor provisions of the state and federal laws.

Only the more stringent of both laws will exist in the summary for an easier understanding of which to apply in Missouri work-based learning programs.

Below: (M) indicates Missouri law; (F) indicates federal law.

First, the portion of this summary relating to the federal child labor law is applicable only for business to which the federal Fair Labor Standards Act applies, with "interstate commerce or gross receipts in excess of \$500,000 annually." This will pertain to almost every business entity as the use of credit cards, fax machines, telephones, electronic mail, Internet, etc. may qualify as interstate commerce. The Missouri State Child Labor Law [RSMo Chapter 294 (Appendix 1)] applies to all businesses in the state.

Work certificates are required for youth ages 14 and 15. The youth obtain them from their school district before being employed during the school year. (M)

Work permits are required for children under 16 years of age for employment in the entertainment industry, issued by the Director of Missouri Division of Labor Standards. (M)

Work cannot be hazardous or injurious to the minor's health or personal well Being (see Hazardous, Prohibited Occupations below). (M), (F)

Hours Minors May Be Employed: For 14-15 years of age no more that 3 hours on a school day, 18 hours in a school week, or 40 hours in a non-school week; may not work before 7:00 a.m. or after 7:00 p.m., may work until 9:00 p.m. June 1 to Labor Day. (M), (F)

Hazardous, Prohibited Occupations (for all minors): (F)

- Manufacturing and storing explosives
- Motor-Vehicle driving and outside helper
- Coal mining
- Logging and saw-milling
- Power-driven woodworking machines
- Exposure to radioactive substances
- Power-driven hoisting apparatus
- Power-driven metal-forming, punching, and shearing machines
- Mining, other than coal mining
- Slaughtering, or meat-packing, processing, or rendering
- Power-driven bakery machines
- Power-driven paper-products machines
- Manufacturing brick, tile, and kindred products
- Power-driven circular saws, band saws, and guillotine shears
- Wrecking, demolition, and ship-breaking operations
- Roofing operations
- Excavation operations

Hazardous, prohibited occupations (for minors under 16): (M)

- Any power-driven machinery
- The oiling, cleaning, maintenance, or washing of machinery
- Any ladders, scaffolding, or their substitute
- Any mine or quarry except in office or at other non-hazardous employment
- Stone cutting or polishing except those found in jewelry type business
- Any plant manufacturing, processing, storing, or transporting Type A and B explosives, ammunition, or like materials, or in an establishment in which sales of Type A and B explosive materials make up fifty per-cent or more of gross sales
- The operation of any motor vehicle
- Any blast furnace, rolling mill, foundry, forging shop, or in any establishment where heating of metals is carried on or where cold rolling, stamping, shearing, or punching of metal stock is carried on.
- Saw mills, cooperage stock mills, or where woodworking machinery is used
- The operation of freight elevators, hoisting machines or cranes, or on or about any man lifts

- Occupations involving ionizing or non-ionizing radiation or any radioactive substance
- Any occupation involving exposure to any toxic or hazardous chemicals
- Any capacity in or about a motel, resort, or hotel where sleeping accommodations are furnished except in office or locations physically separated from the sleeping accommodations
- Any place or establishment in which intoxicating alcoholic liquors or beverages are manufactured, bottled, stored, or sold for consumption on or off the premises, except in establishments where at least fifty percent of the gross sales consist of goods, merchandise, or commodities other than alcoholic beverages
- Any other occupation or place of employment dangerous to life, limb, health, or morals of children under the age of sixteen

Safety And Health Issues

In order to ensure the safety of students participating in the Missouri Community Careers Systems, safety and health training is recommended to students in classes before they begin active participation at the work-site. According to the 1970 Occupational and Safety Act, employers are required to provide employees with safety and health training. Within the Missouri Community Careers System, specific industry training is to be provided by each participating employer. Employers are to maintain records of all training provided. By educating students about safety and health issues in the workplace, the potential risk of injury will be reduced.

Workers' Compensation

The Missouri Workers' Compensation Law is two-part in the benefits it provides. First, it allows employees the right to receive financial compensation for injuries arising from the job. Second, it protects employers from being sued for damages under a civil cause of action for unintentional acts by the employer, which caused injury to the employee. This law applies to each student-participant in the Missouri Community Careers System who is deemed to be an employee in the Employment relationship. Understanding the relationship of the student-participant to the employer-participant will allow all participants to see more clearly how each may be affected by the Missouri Workers' Compensation Law.

Insurance And Liability Issues

Participation in the Missouri Community Careers System does not change or increase the liability of any participant, nor does it alter the level of protection to which student-participants are entitled while both on the school premises and at the work-site. However, the liability of school-participants and the liability of employer-participants are distinct as to the liability each has when student-participants are on the premises. The basic liability concerns for school-participants and employer-participants are discussed later in the guide. For specific questions concerning liability and insurance coverage, insurance agents and their associates are good resources.

Acknowledgments

Frequently the most successful projects are those which are the result of the collaborative effort of many people. Putting together this resource guide has been no exception. The Guide on Labor Issues for Work-Based Learning Participants was completed as a result of the input, suggestions and expertise of many individuals.

We would especially like to express our appreciation to the following individuals for their specific contributions:

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Purpose

The purpose of this document is to provide guidance to all participants –students, parents, educators, business and industry – when they engage in work-Based learning programs. The myriad of laws, regulations, liability and risk Management issues which face business and industry present a compelling case for a ready source of information regarding the basic provisions of child labor, safety and health, workers' compensation and liability. Consequently, this guide should help you understand: A youth's right to a safe and healthy work experience; the need to assure our youth receive a quality education; employers have a need for productive workforce; and, the rights and responsibilities of everyone involved.

Unfortunately, this guide will not provide all of the answers. Liability rules vary By industry sectors; insurance needs are specific to the type of program activities and risk management strategies to be jointly developed with school partners. Our objective with this document is to identify potential problems and to provide Missouri Community Careers System participants with guidelines, resources and steps for developing solutions.

Information in this guide is a general description only and does not carry the force of legal opinion. Before implementation, legal and risk management experts should review any risk management plans developed for a work-based program.

This guide may raise as many questions as answers. Your comments and feedback are needed so we can create an expanded and improved version.

Missouri's Community Careers System

What is Missouri's Community Careers System?

Missouri's Community Careers System (MCCS) is an option to help students attain high academic and occupational standards. It combines school-based preparation and actual work-based experience along with connecting activities to enable students to acquire attitudes, skills and knowledge for career and other life roles in real work settings. MCCS is not mandated for public or private schools.

What is Work-Based Learning?

Students participating in MCCS may engage in a range of work-based learning activities in a work environment. These work-based activities may include job shadowing, field trips, working in internships or apprenticeships. By participating in the workplace, students will learn occupational and employability skills as well as gain a strong career awareness.

Advantages of the Missouri Community Careers System

- MCCS offers expanded to a broad array of career opportunities and allows flexibility in the selection of career paths based on parental involvement and individual student interests, goals, strengths and abilities.
- MCCS offers students challenging, relevant academic and meaningful work-based training beyond high school. This level of preparation will also benefit local business, industries and community as a whole. MCCS allows students the opportunity to strengthen broad social and technical skills, develop personal responsibility and foster positive relationships with adults.
- MCCS utilizes the workplace to help parents, students and educators gain insights into the link between classroom teaming and success in a career through tours, workshops, internships and additional workplace involvement.

Business and Industry Awareness

There are additional areas of awareness involved for business and industry when Participating in work-based learning programs. Involving youth in work environments may present additional risks to participating employers, educational facilities, sponsoring organizations and agencies, along with the young workers themselves. It is necessary to identify any potential hazards in order to increase awareness of all parties involved. This will decrease in injury incidence rates.

Factors for such added risks may include (adapted from the National Institute for Occupational Safety and Health):

- Youth typically work at a series of part-time jobs, often going to their jobs after putting in a full day at school.
- Many of the industries that employ large numbers of teens (such as retail, food service, and manufacturing) have higher-than-average injury rates for workers of all ages.
- Child labor laws, intended to provide extra safeguards for working youth, provide limited protection. Employers need to be well informed about these laws, and they should adapt their hiring and supervising practices in order to be in compliance.
- As new workers, youth are inexperienced and unfamiliar with many of the tasks assigned, workplace hazards, and their rights as workers.
- New workers, who are also more reluctant to ask questions or make demands of employers, may take on tasks which they may not be prepared to do or be capable of doing safely.
- Studies show that youth generally do not receive adequate occupational health and safety instruction either in school or on the job.

Despite some initial investment when involving youth in the workplace, taking a proactive approach such as plenty of supervision and training will serve to minimize the above risks.

The Fair Labor Standards Act: An Overview

A long history of court decisions establishes the congressional power to regulate interstate commerce. This includes the power to regulate labor practices that may interfere with or burden interstate commerce. On this basis, the Fair Labor Standards Act of 1938 (FLSA) was determined to be within the legislative power of the Federal government.

The FLSA is the most general federal labor law. It regulates employment relationships in child labor, minimum wage and overtime. ***Note: where both state and federal labor standards have been enacted with respect to an issue, the more stringent of the two applies. This includes a maximum of eighteen hours per week during school for fourteen and fifteen year-olds and a list of hazardous occupation orders, prohibited for employees under eighteen.***

Child Labor Protections. The FLSA prohibits the use of certain child labor practices. It also prohibits the shipment of goods made in an establishment where such child labor practices are employed. Prohibited child labor practices are detailed in this resource guide's discussion of the FLSA.

Minimum Wage. As of September 1, 1997, the FLSA minimum wage and the Missouri minimum wage were changed to \$5.15 an hour. Section 13 of the Act creates exemptions from the FLSA minimum wage requirement for administrative, professional and executive employees, as well as for persons any age employed in certain occupations. Section 14 of the Act creates exemptions that apply specifically to students. These exemptions will be discussed in more detail later in this guide. In addition, a 1996 amendment to the FLSA permits employers to pay employees 20 years of age and under \$4.25 an hour for the initial 90 calendar days of employment.

Hours/Overtime. The number of hours that employees aged 16 and above are allowed to work is not restricted by the FLSA. However, it is required that employers pay one and one-half times an employee's regular hourly wage for any hour over 40 hours worked in a week. Exemptions exist for administrative professional and executive employees, as well as law enforcement officials and workers in transportation and certain other industries.

In regards to work-based learning programs, it is strongly encouraged that stringent hour requirements for *all* participating students be written into programs and implemented by the schools.

Record-keeping. Failure to keep records pertaining to wages, hours, and working conditions for the required period of time is a violation of the FLSA even if provisions of the Act are complied with.

The FLSA And Missouri's Community Careers System

Students in Missouri's Community Careers System may engage in a range of types and intensities of activities in the workplace. Work performed by students in work-based learning may be employment subject to the FLSA. It may be training that is not subject to the FLSA. The U.S. Department of Labor Wage and Hour Division established criteria based on U.S. Supreme Court interpretations of the FLSA for determining whether work is employment or training. In general, persons performing work will be deemed trainees *not* covered by the FLSA only if *all* of the following criteria are met:

- The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
- The training is for the benefit of the trainees or students;
- The trainees or students do not displace regular employees, but work under their close observation;
- The employer who provides the training offers no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;
- The trainees or students are not necessarily entitled to a job at the conclusion of the learning experience (though employers may offer jobs to students who complete training); and
- The employer and the trainees or students understand that the trainees or students are not entitled to wages or other compensation for the time spent in training (though a stipend may be paid for expenses).

In the event that any one of these criteria is absent, the work performed by the student will likely constitute employment subject to the provision of the FLSA.

Child Labor Protections

Missouri's child labor laws only apply to minors under 16 years of age. *The state law differs slightly from federal law concerning how many hours a child less than sixteen years of age may work.* Employers should take note of both laws to assure compliance with the more stringent, federal law regarding hours of employment.

Missouri Child Labor Laws

The Missouri Department of Labor and Industrial Relations' Division of Labor Standards are responsible for the administration and enforcement of Missouri's child labor laws. The child labor laws ensure that not child less than 16 years of age is employed in an occupation that is detrimental to the child's safety, health, morals, educational process or general well-being. *With the exception of entertainment industry employment, no child under fourteen years of age will be employed or permitted to work in any occupation at any time.*

The state law has restrictions on hours of work for minors less than 16. A child fourteen or fifteen years of age may not be employed during the regular school term unless the superintendent of public schools or his or her designee of the district in which the child lives has

issued the child a work certificate. A child less than sixteen years of age may work in the entertainment industry only if the Director of the Division of Labor Standards issues the child a work permit.

DURING SCHOOL:

Work may not begin before 7:00 a.m.

Work may not end after 7:00 p.m.

No more than three hours in any school day

No more than eight hours in any non-school day

Not more than six days in a week.

DURING SUMMER (June 1 through Labor Day)

Work may not begin before 7:00 a.m.

Work may not end after 9:00 p.m.

No more than eight hours any day.

No more than six days or forth hours in a week.

The Director of the Division of Labor Standards may Waive work hour restrictions for employment in the entertainment industry.

A child less than 16 will not work in connection with:

- Any ladders, scaffolding, or their substitute.
- Any mine or quarry except in offices of at other non-hazardous employment
- Stone cutting or polishing except those found in jewelry type business.
- Any plant manufacturing, processing, storing, or transporting Type A and B explosives, ammunition, or like materials, or in an establishment in which sales of Type A and B explosive materials make up fifty percent or more of gross sales.
- The operation of any motor vehicle.
- Any blast furnace, rolling mill, foundry, forging shop, or in any establishment where heating of metals occurs or where cold rolling, stamping, shearing, or punching of metal stock is occurs.
- Saw mills, cooperage stock mills, or where woodworking machinery is used.
- The operation of freight elevators, hoisting machines or cranes, or on or about any man lifts.
- Occupations involving ionizing or non-ionizing radiation or any radioactive substance.
- Any occupation involving exposure to any toxic or hazardous chemicals.
- Any capacity in or about a motel, resort, hotel, where sleeping accommodations are furnished except in office or locations physically separated from the sleeping accommodations.
- Any place or establishment in which intoxicating alcoholic liquors or beverages are manufactured, bottled, stored, or sold for consumption on or off the premises, except in establishments where at least fifty percent of the gross sales consist of goods, merchandise, or commodities other than alcoholic beverages.

- Any other occupation of place of employment dangerous to the life, limb, health, or morals of children under the age of sixteen.

Also, no child under sixteen years old may work in any street occupation connected with peddling, begging, door-to-door selling or any activity pursued on or about any public street or place until the employers has received written per-mission from the Director of the Division of Labor Standards. This prohibition does not apply to any public school, church or charitable fund raising activity.

Federal Child Labor Laws

The FLSA child labor provisions are designed to protect the educational opportunities of youth. These provisions prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for under 16 years of age. They also list hazardous occupation orders for both farm and non-farm jobs.

Youth 16 and 17 years old may perform non-hazardous jobs, for unlimited hours. Youth 14 and 15 years old may work outside of school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

DURING SCHOOL:

No more than three hours on a school day or eight hours on a non-school day.

No more than eighteen hours in a school week.

Work may not begin before 7:00 a.m.

Work may not end after 7:00 p.m

DURING SUMMER (June 1 through Labor Day)

No more than eight hours per day.

No more than forty hours per week.

Work may not begin before 7:00 a.m.

Work may not end after 9:00 p.m.

Again, as the Federal law is more stringent than Missouri's law regarding hours per week, the above hour requirements need to be followed. We encourage you to use these requirements for all student employees, age 16 and above, participating in our Community Careers System.

Fourteen is the minimum age allowed for most non-farm work. However, at any age, youth may deliver newspapers; perform in radio, television, movie or theatrical performances (i.e. Missouri's requirement for work permits in entertainment); work for parents in their own non-farm business (except in manufacturing or on hazardous jobs); or, gather evergreens or make evergreen wreaths.

There are seventeen hazardous occupation (HO) orders which apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis, regardless of the industry where the occupation is found.

The hazardous occupation (HO) orders apply to the employment of minors under eighteen years of age and include:

- HO 1-Manufacturing and storing explosives.
- HO 2-Motor-vehicle driving and outside helper.
- HO 3-Coal mining.
- HO 4-Logging and saw milling
- HO 5-Using power-driven woodworking machines including saws.
- HO 6-Exposure to radioactive substance.
- HO 7-Operation of power-driven hoisting devices including forklifts, cranes, and non-automatic elevators.
- HO 8-Use of power-driven metal forming, punching, and shearing machines
- HO 9-Mining, other than coal mining.
- HO 10-Slaughtering, meatpacking, processing or rendering including the use of Power-driven meat slicers.
- HO 11-Operation of power-driven bakery machines.
- HO 12-Use of power-driven paper products machines including paper balers.
- HO 13-Manufacturing of brick, tile and kindred products.
- HO 14-Use of circular saws, band saws and guillotine shears.
- HO 15-Wrecking, demolition and ship-breaking operations.
- HO 16-Roofing operations.
- HO 17-Excavation operations, including work in a trench as a plumber.

Type of Work

The hazardous occupations cited above are also applicable to person's aged 14 and 15. In addition, Child Labor Regulation 3 prohibits the employment of persons aged 14 and 15 in the below occupations and activities.

Activities Prohibited under Child Labor Regulation 3

- Manufacturing, mining, and processing.
- Most transportation jobs.
- Cooking other than within view of the public at lunch counter and snack bars.
- Public Messenger Service.
- Work on construction sites other than in the office.
- Any job involving power-driven machinery including hoist, conveyor belts and lawnmowers.

Standards Relating to Minors in Agricultural Work

Agricultural work includes farming in all of its branches. Among other things, it includes the cultivation and tillage of soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices (including forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

A more detailed explanation of agricultural work activities and exemptions is in Title 29, Section 780 of the U.S. Code of Federal Regulations. The nearest U.S. Department of Labor Wage-Hour Division Office Can Assist Schools and Employers in determining whether proposed jobs for students in an agricultural careers pathway will constitute agricultural work for the purposes of FLSA.

Penalties for Missouri Child Labor Violations

Any employer who violates Missouri child labor laws could be found guilty of a class C misdemeanor. In addition to the criminal violation, any employer who violates Missouri child labor laws could be liable for damages or penalties. These penalties range from fifty dollars to one thousand dollars for each violation. Each day a violation occurs is a separate violation.

The Director of the Division of Labor Standards determines the amount of civil damages. These penalties are based on the nature and gravity of the violation. A request for maximum Penalties includes conditions such as:

- The likelihood of injury and the seriousness of the potential injuries to which the child has been exposed
- The employer has had multiple violations
- The employer has had recurring violations
- Employment of any child in a hazardous or detrimental occupation
- Violations of children under fourteen years of age
- A substantial number of hours worked in excess of the statutory limit
- Falsification or concealment of information regarding the employment of children, and
- Failure to assure future compliance with MO child labor laws.

Missouri's child labor provisions are enforced by the Wage and Hour Section. This section is in the Division of Labor Standards, Department of Labor and Industrial Relations.

Penalties for Federal Child Labor Violations

Any employer who violates the FLSA child labor provisions may be fined up to \$10,000 per violation. A second willful violation can result in a \$10,000 fine or six months in prison or both.

Minimum Wage Laws

Missouri Minimum Wage Law

The Missouri minimum wage law was changed to \$5.15 per hour as of September 1, 1997. This is the same rate set under the provisions of Federal Law.

The Missouri Minimum wage law does not apply to:

- Any individual who receives a minimum wage under the FLSA, or any individual who is employed in any government position.
- Any individual employed by a retail or service business whose annual gross volume sales made or business done is less than five hundred thousand dollars.

This means that if a business is subject to the federal minimum wage law, Missouri's minimum wage law does not apply.

FLSA Standards Relating to Employees Aged 16 and 17

The minimum wage, \$5.15 per hour, must be paid to employees 16 and 17 unless an exception exists.

exception: Employers may obtain a certificate from the Wage-Hour Division of the U.S. Department of Labor Employment Standards Administration authorizing the payment of a sub-minimum wage to persons sixteen or older who are:

- Student-learners in a vocational training program defined in Title 29, Section 520 of the United States Code of Federal Regulations;
- Full-time students working in retail establishments, in service establishments and in institutions of higher learning where they are enrolled; or
- Students with disabilities participating in cooperative vocational education.

The permissible sub-minimum wage is seventy-five percent of the federal minimum wage for Student-learners. It is eighty-five percent of the federal minimum for full-time students Employed in retail, service establishments and institutions of higher learning. These sub-minimum wage rates also apply to any disabled student employed as a student learner of full-time student. Certificates authorizing employers of disable workers to pay commensurate wage rates based on productivity may apply in cooperative vocational education.

FLSA Standards Relating to Employees Aged 14 and 15

The minimum wage, \$5.15 per hour, must be paid to 14- and 15-year-old employees unless an exception exists.

Employers may obtain a certificate that allows them to pay eighty-five percent of the federal minimum wage to full-time students employed in retail or service establishments. These certificates are issued by the Dallas Regional Office of the U.S. Department of Labor Wage and Hour Division.

Safety and Health

Safety & Health/Child Labor Training within the Educational Facility

We recommend safety and health training for Missouri's Community Careers System. This includes general training from the educational facility before the student is placed in the work-place. The most efficient method will vary for each region and community. Several suggestions are:

- Require workplace safety and health/child labor training in high school health classes.
- Offer class sessions periodically (e.g., once a month) between community careers internship coordinators and community careers internship students. Instead of working that day, the students would meet to turn in daily logs and time sheets and go over any problems. At this time, training may be implemented *continuously* throughout the semester.
- Mandatory training workshop for community careers students *before* they are permitted to work on site.

Samples of safety and health/child labor curricula are listed in Appendix F. These curricula focus on the importance of early training. This training establishes safe and healthy work practices and instills the rights of the student-participants. Training issues may need a special focus (e.g., a particular industry) depending on the region or community. Training may emphasize certain areas but should not exclude: the child labor laws; identification of workplace hazards; workers' right to a safe and healthful work environment; workers' compensation; and sexual harassment. *Be sure to document all training sessions with each student signing off.*

Employer Safety & Health Training

Employers are required by law to provide employees with safety and health training. Within the Missouri Community Careers System *specific* industry training is to be provided by each participating employer. Employers are required to maintain records of all training they provide.

The 1970 Occupational Safety and Health Act (OSH Act) is the most recent legislation covering control of the in-plant environment. The purpose of the Federal Occupational Safety and Health Act is to assure every person working in a non-governmental position a safe and healthful working environment and to preserve human resources. Occupational health rules and regulations require specific conditions in the workplace or the use of specific practices, methods or process to promote safe work. Employers are responsible for becoming familiar with standards applicable to their establishments. They also must ensure a safe work environment for their workers.

The Missouri On-Site Safety and Health Consultation Service is available as a resource for Missouri employers. This free service employs a professional staff who may, at employer request, provide a confidential consultation visit, without cost or penalties. Safety and health programs for employers and employees. The Consultation Service is housed within the Division of Labor Standards, Missouri Department of Labor and Industrial Relations. Contact information for the Consultation Service is located at the end of this guide.

Occupational Health

According to Missouri's child labor law (RSMo 294.040) (see Appendix A), "A child under sixteen shall not be employed or permitted to work by any person, firm, or corporation in connection with any occupation involving exposure to any toxic or hazardous chemicals. Requirements of the Occupational Safety and Health Act include monitoring and evaluating the workplace environment for those employees age 16 and above who may be exposed to any toxic or hazardous chemical.

Recommendations

The National Institute for Occupational Safety and Health (NIOSH) recommends the following groups take these steps to protect adolescent workers:

Employer-Participants

- Know and comply with child labor laws and occupational safety and health regulations that apply to our business. Post these regulations for workers to read.
- Assess and eliminate the potential for injury or illness associated with tasks required of adolescents.
- Provide training to ensure that adolescents recognize hazards and are competent in safe work practices.
- Evaluate equipment that adolescents are required to operate to ensure that it is both legal and safe for use by adolescents.
- Ensure that adolescents are appropriately supervised to prevent injuries and hazardous exposures.
- Involve supervisors and experienced workers in developing an injury and illness prevention program, and in identifying and solving safety and health problems

Educators

- If you are responsible for issuing work certificates, know the state and federal child labor laws.
- Talk to students about safety and health hazards in the workplace and students' rights and responsibilities as workers.
- Ensure that school-based work experience programs provide students with safe and healthful environments free of recognized hazards.
- Ensure that school-based work experience programs incorporate information about workers' legal rights and responsibilities. Include training in hazard recognition and safe work practices.
- Consider incorporating information about workers' rights and responsibilities, and occupational safety and health into junior high school and high school curricula. This better prepares students for the world of work.

Parents

- Take an active role in the employment decisions of your children.
- Discuss the types of work involved and the training and supervision provided by the employer.

- Know who is employing your child and where to find the employer at all times.
- Know where your children should and should not be working.
- Be sure your children have the appropriate work permits or certificates.

Student-Participants

- You have the right to work in a safe and healthy workplace. It should be free of recognized hazards. You have the right to refuse unsafe work tasks and conditions.
- You have the right to file complaints with the U.S. Department of Labor. If you feel your rights have been violated or your safety has been jeopardized, consider filing a complaint.
- Adolescent workers are entitled to workers' compensation in the event of work injury or illness
- Get information about your rights and responsibilities as workers from school counselors and State Labor departments.
- Participate in any training programs offered by your employer or request training if none offered.
- Recognize the potential for injury at work. Seek information about safe work practices from employers and State Labor Departments.
- Follow safe work practices.

Workers' Compensation

Introduction

Often known as the "Big Compromise," the Missouri Workers' Compensation law was enacted in 1926. The law was a coming together of business and labor to create a system for injured employees to financial compensation for injuries arising from the job. It also created a system where employers would receive protection from civil suits. The law today is found in Chapter 287 of the Revised Statutes of Missouri.

The Missouri Division of Workers' Compensation is a division with the Missouri Department of Labor and Industrial Relations. The Division is composed of two parts, the administrative and adjudication functions. The Division oversees the reporting of work injuries and illnesses. It provides adjudication personnel, known as administrative law judges and legal advisors, to resolve disputes between employees and employers concerning benefits.

Exclusive Remedy

Some of the basic parts contained in the law at its passage still remain today. One of those is known as exclusive remedy. Employees injured on the job can only pursue benefits provided under workers' compensation. They may not pursue their employer for damages under a civil cause of action. Exclusive remedy is not an absolute bar. There are circumstances in which an employee may have a cause of action against an employer for an injury occurring within the course of his or her employment. These situations are

few. They may include intentional acts by the employer to cause the injury or when the employer is uninsured.

Coverage Under the Missouri Workers' Compensation Law

An employer is defined by the workers' compensation law as any entity that uses the services of another. According to Chapter 287.030, RSMo, employers are corporations, partnerships, municipalities, school districts and non-profit organizations. This is not an exhaustive list. Employers having five or more employees, or is in the construction industry one or more employees, are required by Missouri law to carry workers' compensation coverage.

Under the workers' compensation law, an employee is defined as any person in the service of an employer as defined in the chapter. The employee must be performing work pursuant to a contract of hire either express or implied, oral or written, or under any appointment or election. (See § 287.020 RSMo). Minors are specifically included within the statutory definition of employee. Minors have the same right to benefits as all other employees. There is no exclusion from coverage solely on the basis of the employee being a minor. This holds true even if the minor is employed in violation of the law. Employers who knowingly employ a minor in violation of the child labor laws of the state are liable for an additional fifty percent in compensation benefits.

If there is a question of whether there is an employment relationship, the courts have traditionally used the "controllable services test." This is a two-prong test to determine whether the injured individual is an employee for purposes of workers' compensation. The individual must satisfy both parts of the analysis to be considered an employee for purposes of workers' compensation.

First, the individual must be "in the service" of the employer. The individual must be performing some service that is of benefit to the employer. Being paid a wage is not a requirement for meeting this part of the test. Volunteers receiving no wages who provide a service that would otherwise be performed by an employee meet this prong of the test.

Second, the employer must have some control over the individual's performance of labor. The employer has the right to control the individual in how the job is being done. This is why independent contractors are not employees for purposes of workers' compensation. An employer does not control the way in which the independent contractor performs his or her job.

Finally, an individual may also be covered under the law even though the employer may not have hired that individual explicitly. This is known as a statutory employee. If an employer has an individual doing work on or about the employer's premises, which is in the employer's usual course of business, the employer is the statutory employer of that individual and has liability for benefits for a work injury during that time (see Chapter 287.040.1, RSMo). Pursuant to this doctrine, employers can have a workers' compensation liability for independent contractors and subcontractors where the individual is performing the employer's usual business on or about the employer's premises.

Thus, for determining whether a student would be considered an employee for purposes of workers' compensation, it is important to go through the above analysis. In the School to Work Program, if a student is performing a job duty on site that is in the usual course of the employers' business, that student may be an employee for purposes of workers' compensation, even though the employer never actually "hired" the student. A student's classification under FLSA as a "student learner" does not dictate whether the student is an employee for purposes of workers' compensation.

Accidents Compensable Under Missouri's Law

For an accident to be compensable under the Missouri workers' compensation law, the injury or disease must "arise out of and in the course of employment" (see Chapter 287.020.5, RSMo).

"Out of the course of employment" means the injury or disease must have been a result of the performance of the job. There must be some casual connection between the work and the injury or disease.

"In the course of employment" means that at the time of the injury or disease the employee was performing a duty that was of some benefit to the employer. The injury occurred within the time of employment at a place the employee was performing a service for that employer.

Benefits under Missouri Workers' Compensation

Employees coming under the Missouri workers' compensation law are entitled to three types of benefits.

- Employees are entitled to medical treatment to cure and relieve the effects of the injury at the cost of the employer. The employer has the right to select the medical provider.
- Employees who are unable to return to work on a temporary basis due to the injury are entitled to a lost wage benefit called Temporary Total Disability, often known as TTD. The employee is entitled to receive this benefit during such time the doctor determines the employee is unable to return to the open labor market.
- The third type of benefit is the Permanent Partial Disability benefit. This is a lump sum benefit based on the permanent effect of the injury to the employee.

Pursuant to Missouri workers' compensation law, for purposes of establishing the average weekly wage for an individual under the age of 21 who is entitled to a Permanent Partial Disability benefit, a Permanent Total Disability benefit, or whose dependents are eligible for a death benefit, the employee's increased earning power is taken into consideration. If the injured employee is under 21, an apprentice or a trainee, and his or her earnings would reasonably be expected to increase, the average weekly wage is adjusted to reflect the expected increased income of wages upon completion of the apprenticeship or traineeship.

In cases in which it is found the employer knowingly employed a minor in violation of the child labor laws of Missouri, an additional 50 percent compensation benefit is allowed.

Waivers Under Missouri Workers' Compensation

According to Chapter 287.390, RSMo, employees may not waive their rights to benefits under the Missouri workers' compensation law. Employees may not sign a waiver that will be given any effect by an administrative law judge or a court.

Insurance Converge for Student-Participants

An employer participating in the School to Work program may have a worker's compensation liability for doing so. If coverage is necessary the cost of the insurance can not be charged to the student employee (see Chapter 287.290 RSMo). The employer should discuss obtaining coverage for the student employee with an insurance agent or insurance carrier.

Failure to Provide Workers' Compensation Coverage

Employers who fail to provide workers' compensation coverage when required by law to do so are subject to a penalty. This penalty is an amount equal to twice the amount of premium the employer would have paid had the employer been insured of \$25,000 whichever amount is greater.

Conclusion

Liability under workers' compensation depends upon the facts surrounding the injury. This guide cannot determine if you have any liability under workers' compensation for participating in the Missouri Community Careers Systems. You should consult with your attorney and insurance agent to determine your liability, if any, under workers' compensation for participating in the Missouri Community Careers System. For specific questions regarding worker's compensation, please refer to the listing at the end of this guide.

Insurance And Liability Issues

Introduction

Participation in the Missouri Community Careers System does not change or increase the liability of any participant. It does not alter the level of protection to which student-participants are entitled both while on the school premises and at the work-site. However, just as students must be protected from unnecessary harm, educational institutes and employers must be protected from unnecessary liability. Understanding not only the in-school activities, which are already covered in most school insurance policies, but all aspects of the comprehensive School-to-Careers model. This will better help to clarify the questions of liability, which become more complex when students participate in work-based learning.

Liability and the Missouri Community Careers System

Some employers may decide not to participate in the work-based component of the Missouri Community Careers System. They may incorrectly believe that their participation will increase their liability. The liability that exists today for both schools and employers also existed before creation of the Missouri Community Careers System. Furthermore, participating in the Missouri Community Careers System does not create new causes of action. It does not increase the amount of potential damages. It does not

alter the responsibilities of any School-to-Careers participant with respect to common law, workers' compensation, child labor laws, the Fair Labor Standards Act, equity issues, and occupational safety and health. Participation in the Missouri Community Careers System does not alter any liability obligation beyond those that already exist. For specific questions regarding liability, contact your insurance agent or insurance company.

Liability of Schools

Injury to Student-Participant—When a student-participant is injured and the student-participant is also an employee of the school, the exclusive remedy for the individual is coverage by the state's workers' compensation laws.

When a student-participant is not an employee of the school and an injury occurs, and the school or employees of the school cause the injury through gross negligence, the same common law tort issues apply as if the individual were only a member of the general public. The student may sue to recover damages for the injury caused by the negligence. However, neither the school's liability is increased nor are liability issues expanded by having student-participants on-site while participating in the School-to-Careers activities.

Injuries or Damages Caused by Student-Participant—A school will not typically be liable for damages caused by a student-participant in the Missouri Community Careers System. Participation in MCCS does not change the school's legal relationship to students in this manner.

Liability of Employers

Injury to Student-Participant—The issue of liability occurs whenever any business has individuals on its work-site. The type of liability depends on whether a student-participant on the work-site is an employee or an invitee. An employee is an individual who works for another for salary or wages. However, if an individual is on the work-site in order to perform some service that is of benefit to the employer, even though the individual is not being paid a wage, that individual will be able to receive compensation through the state's workers' compensation if injury occurs. If an individual is merely an invitee, an individual invited to be on the premises, the employer's exposure to liability is no different than that which already exists to the general public.

In the arena of the Missouri Community Careers System, it is the student-participant who will be able to receive remedies provided through the workers' compensation benefit delivery system. This occurs if that student-participant is considered an employee of the business and the injury arises out of an in the scope of the student-participant's job duties. If the student-participant is not an employee and s/he is injured on the work-site, and cost accrued from medical attention received due to the injury will need to be paid by the student-participant's (or parent's) health insurance policy. The "medical payments" provision of the employer's general liability policy would also provide similar coverage for non-employee student-participants.

It is also important to keep in mind that whenever an injury to a not-employee at the work-site occurs, a lawsuit can be filed. This remedy exists for any non-employee who is on the work-site, not just for student-participants. Employers should consult their insurance agents to determine whether their existing insurance policy is sufficient to

cover injuries to non-employees, such as MCCS participants, on the work site. Having a policy that would cover injuries (i.e., the cost of medical attention) to non-employees could prevent a lawsuit being filed for reimbursement of costs due to same injuries.

Injuries or Damages Caused by Student-Participant—Employers involved in the MCCS activities may be liable for injuries or damages caused by student-participants involved in work-based learning if such student is:

- acting on behalf of the participating business; or
- acting with the actual or apparent authorization of the business; and
- the student-participant is negligent; and
- that act resulted in:
 - *injury to customers, passers-by, visitors or the general public; or
 - *damage to the property of customers, passers by or the general public.

If the student-participant does something that causes injury to an employee in the workplace, that injury would typically be covered by the state's workers' compensation. It would be subject to the benefits provided by the workers compensation coverage.

If a student-participant who is considered an employee does something to cause injury to a non-employee, a lawsuit can be filed (by the injured non-employee) against the employer. An employer's general liability policy usually will pay claims and provide legal defense against most types of suits brought against a company and its employees. However, one must be aware that such policies generally do not cover invitees, volunteers, or certain unpaid trainees. Amendments may extend the coverage to invitees, volunteers and unpaid trainees. For answers to specific questions, employers should contact their insurance agents.

Liability Shields

Liability shields are used to assign responsibility from an employer to another person or organization in case of an injury or damage to property. Liability shields are used to protect both the finances of the company and goodwill in the community. The four common liability shields are waivers, consent forms, permission slips and indemnification agreements.

Waivers—A waiver is a document in which a student-participant signs away his or her right to bring a lawsuit in the event of an injury. A waiver is not an effective tool to use with young people because courts seldom allow a minor to sign away the right to be protected from negligence.

Consent Forms—A consent form is a document that informs the student-participant (and parents or guardians) in detail of the risks involved in the activity that s/he is about to perform. Student-participants and parents or guardians sign the document indicating that they have read and understand the risks involved in the activity. They agree not to bring a lawsuit for any injury resulting from the identified risks. Consent forms are generally upheld in courts. They do not excuse a company from responsibilities for its own negligence that may have caused the injury.

Permissions Slips—A permission slip is a document that informs parents or guardians about the nature, location, and details of an activity. *Permission slips are helpful as a form of protection to a company – a well-informed parent or guardian may be less likely to bring a lawsuit in case of an injury.*

Indemnification Agreements—An indemnification agreement is used to shift the financial burden for injuries or damages arising from activities from one party to another. The organization or individual that signs the agreement must have both an insurance policy and the proper funds to honor the commitment to indemnify. Legal counsel should be consulted before signing an indemnification agreement.

Recommended Practices

Address Insurance and Liability Issues—Before an employer begins participation in the MCCS, there are certain steps that should be taken to ensure that involvement in the program is successful for all participants. Below is a list of such steps that should be taken:

1. Consult with an attorney about the range of legal issues that could arise during participation in the MCCS.
2. Consult your insurance company early on in the design of the work-based learning experiences that your business will offer.
3. Address employer concerns: invite experts to answer your questions about insurance and liability issues in a workshop or in a letter to potential employer-participants.
4. Contact the School-to Careers coordinator in your area for specific questions that have not been addressed in this guide.
5. Confirm employers' workers' compensation coverage with appropriate legal authority.
6. Confirm that your insurance policy is up-to-date and current. Policies are often canceled for late or non-payment of premiums.

Most Frequently Asked Questions

What agencies may be contacted to check on an employer before a student is placed at their worksite:

1. U.S. Department of Labor – Occupational Safety and Health Administration (OSHA): Request under the Freedom of Information Act any information on OSHA citations on a particular employer. These citations and penalties are of public record.
2. Make a request if an employer has violated the Missouri child labor law from the MO Division of Labor Standards under the “Missouri Sunshine Law.” This information is not released for ongoing investigations.
3. Better Business Bureau – assuming a correlation between treatment of customers and employees.
4. Attorney General’s Office – Consumer Fraud Hotline 1-800-392-8222.

What are the primary laws that regulate youth employment in the state of Missouri?

By Law, your employer must provide:

- A safe and healthful workplace.
- Safety and health training, in many situations, including providing information on chemicals that could be harmful to your health.
- For many jobs, payment of medical care if you get hurt or sick because of your job. You may also be entitled to lost wages.
- At least the Federal Minimum wage or \$5.15 to most teens, after their first 90 days on the job. Lower wages may be allowed when workers receive tips from customers or if particular training requirements are met with the United States Department of Labor, Wage and Hour Division.

You also have a right to:

- Report safety problems to OSHA.
- Work without racial or sexual harassment.
- Refuse to work if the job is immediately dangerous to your life or health.
- Join or organize a union.

How long should job shadowing/field trip experiences last?

Generally, job shadowing or field trips are not recommended to last more than two consecutive days at a time. This is due to the unlimited liability that may be involved including punitive damages, pain and suffering, etc. Such experiences are open to torts law and negligence, therefore, providing a discomfort zone. Although an incident is less likely to occur because there is no work involved; the chances increase as the duration of the experience increases.

What kind of documentation do I need for my program?

Documents that you will want on file are:

- *permission/release forms,
- *training logs, and
- *any other miscellaneous agreements (e.g., student responsibilities).

Each document need not be longer than a paragraph or page in length. Retain and attorney to draft or review each document if you do not feel comfortable doing so yourself. The above combination of documents will show a pattern of “due diligence.” However, any of the above documents alone are never as strong. Keep in mind that by reviewing these documents, workers may keep their commitment and gain a greater understanding of their responsibilities.

RESOURCES

1. **U.S. Department of Labor, Wage and Hour Division**—To obtain more information or to ask questions concerning the *Fair Labor Standards Act (FLSA)*, write or call one of the below district offices. These office supply publications free of charge. The FLSA includes minimum wage, wage and hour requirements, and federal child labor laws.

Kansas City Area Office
(913) 551-5721
400 State Avenue
Suite 1010
Kansas City, KS 6101

St. Louis Area Office
(314) 539-2706
222 Spruce Street
Room 9.102B
St. Louis, MO 63103

Or go to their web site at:

http://www.dol.gov/dol/esa/public/whd_org.htm

2. **Missouri Child Labor Law (RSMo Chapter 294)** – To obtain more information or to ask questions regarding the Missouri child labor law or state consultation service, visit the Division’s home page or contact them at:

Missouri Department of Labor and Industrial Relations
Division of Labor Standards
PO Box 449
Jefferson City, MO 65102-0049
Telephone: (573) 751-3403 / (800) 475-2130
FAX: (573) 751-3721
Home page: <http://www.dolir.state.mo.us/lr>
E-mail: laborstandards@dolir.state.mo.us

3. Missouri Workers’ Compensation

To obtain more information or to ask questions regarding Missouri Workers’ Compensation, visit the Division’s home page or contact them at:

Missouri Department of Labor and Industrial Relations
Division of Workers’ Compensation
P.O. Box 58
Jefferson City, MO 65102-0049
Telephone:
Employer Hotline (888) 837-6069
Employee Hotline (888) 775-2667
Fraud and Non-compliance (800) 592-6003 or (573) 526-6630

Fax: (573) 526-1441

Home page: <http://www.dolir.state.mo.us/wc/index.htm>

4. Missouri Workers' Safety Program

For assistance with Safety Consultations, contact them at (573) 526-3504. This program advises the Missouri business community on methods of reducing the cost of workers' compensation insurance

5. U.S. Department of Labor Occupational Safety & Health Administration (OSHA)

To obtain more information regarding federal safety and health regulations, write or call one of the below district offices.

Kansas City Area Office

6200 Connecticut Avenue, Suite 100

Kansas City, Missouri 64120

TEL (816) 483-9531

FAX (816) 483-9724

(800) 892-2674 Toll Free – Missouri Only

St. Louis Area Office

911 Washington Avenue, Room 420

St. Louis, Missouri 63101

TEL (314) 425-4249

FAX (314) 425-4289

(800) 392-7743 Toll Free – Missouri Only

Or go to their web site at: <http://www.osha.gov/>

6. Center for Disease Control and Prevention (CDC) National Institute for Occupational Safety and Health (NIOSH)

To obtain more information regarding federal safety and health research, call the telephone number below or visit their public home page. Publications are supplied free for charge. NIOSH identifies the causes of work-related diseases and injuries and the potential hazards of new work technologies and practices.

NIOSH Technical Inquiries 1-800-35-NIOSH (1-800-356-4674) or

<http://www.cdc.gov/niosh>

7. The Young Worker Safety & Health Network

The Young Worker Safety & Health Network is an organization of individuals who have, as a common goal, the safety of youth in the workplace. For more information, go to their home page:

<http://opie.dolir.state.mo.us/youngworkers/index.htm>

8. Missouri AFL-CIO

For more information on your right to join a union write or call:

208 Madison

Jefferson City, Missouri 65101

Telephone: (573) 634-2115

Additional Resources

- Children's Safety Network, Massachusetts Department of Public Health. (1995) *Protecting Working Teens: A Public Health Resource Guide*. Newton, MA: Authors.
- Florida Departments of Education and Labor. (1997). *Florida's Work-Based Learning And Child Labor Law: Resource Guide*. Tallahassee, FL: Educational Services Program
- Oklahoma Department of Vocational and Technical Education. (1996). *Implementing a Local School-to-Work Partnership: Legal and Labor Considerations, Module 12*. Stillwater, OK: Authors.
- Michigan State Board of Education. (1997). *Child Labor Requirements. Application of State and Federal Standards*. Lansing, MI: Authors.
- Michigan State Board of Education. (1996). *A Guide to Work-Based Learning: Business and Industry Risk Management Plan*. (Second Edition) Lansing, MI: Author.
- National Institute for Occupational Safety and Health. (1995). *NIOSH Alert: Preventing Deaths and Injuries of Adolescent Workers*. Cincinnati, OH: Author
- National Institute for Occupational Safety and Health. (1997). *Are You A Working Teen? What You Should Know About Safety and Health on the Job*. Cincinnati OH: Author.
- National School-to-Work Office. (1997). *School-to-Work and Employer Liability: A Resource Guide*. Washington, D.C.: Author
- U.S. Department of Education and Labor. (1995). *A Guide to Work-Based Learning and The Fair Labor Standards Act*. Washington, D.C.: Office of the Solicitor and the Employment Standards Administration of the Labor Department.
- U.S. Department of Labor Wage-Hour Division. (1991). *The Child Labor Requirements In Nonagricultural Occupations Under the Fair Labor Standards Act*. Washington, D.C.: U.S. Department of Labor.
- U.S. Department of Labor Wage-Hour Division. (1996). *Handy Reference Guide to the Fair Labor Standards Act*. Washington, D.C.: Employment Standards Administration.